

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>XRED, INC.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PROPERTY TAX ADMINISTRATOR</b></p>	<p><b>Docket No.: 50295</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on December 15, 2008 and January 22, 2009, Diane M. DeVries and Karen E. Hart presiding. Petitioner was represented by Mr. Steve Terrell, owner of XRED, Inc. Respondent was represented by Robert H. Dodd, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2006.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**15451 E. Mississippi Ave. Suite C, Aurora, Colorado  
Arapahoe County Schedule No. 27215-59588-001  
PTA File No. 03-08-082**

The subject property consists of laundromat personal property located in the Washcity Laundry.

Petitioner filed an abatement petition seeking a refund of 2006 taxes, due to an overvaluation of its equipment, with the Arapahoe County Board of Commissioners who granted the petition. The petition was forwarded to the Property Tax Administrator (PTA) who denied the petition on the grounds that Petitioner's valuation was a best information available (BIA) assessment, that an objection to the valuation was allowed during the 2006 protest period under CRS § 39-5-122(2), and that Petitioner had not pursued the appropriate administrative remedies at that time. On July 23, 2008, Petitioner filed an appeal of the PTA's denial with the Board. On October 31, 2008, Respondent filed a Motion to Dismiss the petition.

Respondent's witness, Mr. Joel Shurtleff, Personal Property Appraiser with the Arapahoe County Assessor's office testified that in 2005 US Bancorp reported to the assessor that their lease (for laundry equipment) with Petitioner was no longer active. Once the lease expired, Petitioner became the responsible party for the personal property taxes. A personal property declaration was mailed to Petitioner at the address of record in January 2006. The declaration was not completed and returned to the assessor. Pursuant to CRS § 39-5-116(1), the assessor placed a BIA assessment on the property. The assessor assigned a value of \$130,847.00 to the previously leased equipment based on the leased property data supplied by US Bancorp. The lease value, including the equipment's total installed costs, was converted to an actual value based on the Division of Property Taxation's Personal Property procedures using a 6 year life table. An additional value of \$19,153.00 was assigned for signage, the hot water system, and miscellaneous business associated equipment. This value was based on Mr. Shurtleff's experience as a personal property appraiser and his knowledge of typical values of other business signs, hot water systems, and miscellaneous equipment.

On or about June 9, 2006, a Notice of Valuation was sent to Petitioner indicating an "Equipment, Furniture, etc." value of \$150,000.00 and stating protest procedures.

On or about August 16, 2006, the assessor mailed a non-filing letter to Petitioner, indicating no declaration had been filed and allowing an additional two weeks from the date of the letter for Petitioner to file the form and correct the assessment based on a submitted asset listing. No declaration was received by the assessor.

On January 30, 2007, Petitioner called the assessor and submitted a mailing address change. Mr. Shurtleff again asked for an asset listing but none was received. In 2008, a declaration was sent by Petitioner, albeit delinquent; this was the first time the assessor received the requested information from Petitioner.

Petitioner's witness, Mr. Steve Terrell, owner and agent of XRED, Inc., admits that he did not file a personal property declaration as required pursuant to CRS § 39-5-108 and did not protest the BIA assessment prior to his filing of the abatement petition. However Mr. Terrell believes the BIA valuation was excessive and arbitrary and should be reduced.

According to *Property Tax Administrator v. Production Geophysical Services Inc.*, 860 P.2d 514, 519 (Colo. 1993):

When the taxpayer fails to return the information required by the personal property schedule, the assessor still must determine the value of the taxpayer's property . . . using the best information available to him or her. If the taxpayer believes that the valuation has been made in error, it must then file a protest in accordance with the statutory procedures set forth in section 39-5-122(2). If the taxpayer neglects to avail itself of the procedure, the assessor's BIA valuation is presumed to be accurate and becomes the final valuation.

The Board is convinced that the BIA assessment had a reasonable basis and was not arbitrarily or capriciously applied by the Arapahoe County Assessor. Petitioner admits it did not file a

declaration schedule and did not follow the protest procedure set forth in CRS § 39-5-122(2). Therefore, Petitioner may not seek an abatement/refund of the BIA assessment.

Respondent's Motion to Dismiss is granted.

**ORDER:**

The petition is dismissed.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

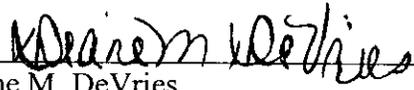
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

CRS § 39-10-114.5(2) (2008).

**DATED and MAILED** this 10<sup>th</sup> day of February 2009.

**BOARD OF ASSESSMENT APPEALS**

  
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Diane M. DeVries

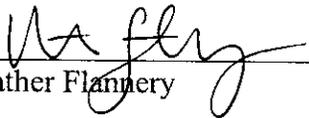
  
\_\_\_\_\_  
Karen E. Hart

This decision was put on the record

**FEB 09 2009**

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I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

  
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Heather Flannery

